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International Court of Justice

OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL,, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON 19 AUGUST 1946, 1000-1300 LORD JUSTICE LAWRENCE PRESIDING.

MR. DODD: Mr. President, I would like to be heard very briefly this morning on the application of Dr. Stahmer for permission for the defendant Goering to take the stand. I made no objections Friday, but I feel that I should make one so that the Tribunal will know what our attitude is.

I do not want it to be understood that I am in any conflict with my distinguished colleague, Sir David Maxwell Fyfe, but I do wish to add a few comments on behalf of the United States.

I would like to point out to the Tribunal that the reasons given by Dr. Stahmer, as we understand them, are the evidence or the testimony of the witness Sievers and the document which was offered during his examination, wherein there is some indication that the defendant Goering had authorized or ordered a Dr. Haagen to institute these medical experiments.

Now, it seems to me that the reasons which I called to the Tribunal's attention at the time of the Funk application apply here. Of course, I accept the ruling of the Tribunal with respect to the Funk application with good grace. I do not want to have it appear that I am raising objections against a matter that has been ruled on.

THE PRESIDENT: Which application did you say ?

MR. DODD: The Funk application. It seems to me that there is a similarity in these matters, and particularly the Funk experience now would seem to have some bearing on this Goering application. It is my own judgment, which I respectfully offer for the Court's consideration, that Funk did not really add anything pro or con to the proof in this case by his re-appearance on the stand. He only succeeded in taking up a little of the Tribunal's time.

Now I suggested at the time of the Funk application that he had

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already denied really the heart and soul of the Pohl affidavit and that he could not do much more than re-affirm it on the witness stand, and that is, I respectfully suggest, almost precisely what happened.

I think the same will be true with respect to Goering, and I would like to call to the Court's attention that long before Goering took the witness stand the Prosecution had offered its proof concerning these Luftwaffe medical experiments, so that he knew about them; his Counsel knew about them, and if his Counsel had cared to inquire about them, he could have done so on Goering's direct examination, but he chose not to do so. He did not raise the question at all. He passed it by and preferred, as was his right I assume, to rest the matter with Goering's witness Milch, and we cross examined, through our Chief Counsel, Mr. Justice Jackson, the witness Milch on that question.

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If Goering wishes merely to deny that he had any knowledge or participation in these Luftwaffe medical experiments it is a very simple matter and there is some precedent here for it now in view of the Frank affidavit. I suggest he file a very brief affidavit that would be no more than a few short sentences saying he did not have knowledge and that he did not participate. The Tribunal allowed Frank to do that. He went pretty far. His affidavit took 20 minutes. I certainly do not think it would be necessary for Goering to take anywhere near that much time. As an alternative, and I have not talked with my French and Russian colleagues, Sir David Maxwell Fyfe and I agree, and I think they will, that the records show that Goering denies that he had knowledge of or participated in the Luffwaffe experiments. That would be satisfactory to us. In any event, what we would like to avoid is any kind of a procession to the witness stand by these defendants. They have had a full hearing. This Tribunal has been very patient. I think they will be imposing on the Tribunal if they take the stand for these purposes which can be accomplished in a much more simple manner.

I must say to the Tribunal that I have very grave doubt that Goering really wants to take the stand for this simple purpose. I think he wants to filibuster against judgment. I think I would be remiss in my duty if I did not so advise the Tribunal this morning. Therefore, we object very strongly, if I may say so with great respect, and ask that either he submit his denial in the form of an affidavit or that the stipulation in the form we suggested be accepted by the Tribunal.

I ask that he and any other defendant who filed a similar application be refused at this stage of these proceedings, the opportunity to again get on this stand and again take up time with matters that really do not go to the heart of the proof. I would be the last man here to try to cut out of this very important trial anything that I thought was really vital or important. I would not cast any shadow of unfairness

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or any suspicion of it, upon this splendid record of fairness the Tribunal has compiled. I do not believe any prejudice will be evidenced if we ask Goering to fill out a brief affidavit or if we ask his counsel to agree to our offer to stipulate. Thus we will save much of the Tribunal's time and we will get on further with these proceedings.

THE PRESIDENT: The Tribunal will consider the matter.

Dr. Servatius, you were going through, as I said on Friday with great ability, these various affidavits, were you not?

DR. SERVATIUS: Yes.

THE PRESIDENT: Is it not the case that all these affidavits were summarized in the proceedings before the Commission and we, therefore, have before us a reference to each one of these affidavits?

DR. SERVATIUS: Mr. President, that is only partially true. I, personally, did not attend all the sessions of the Commission. Therefore, I do not have an exacting over-all picture. The affidavits which I wish to submit now, I shall try to characterize most briefly in order to turn to those affidavits which were not dealt with in the Commissions and those were but very very few.

THE PRESIDENT: Up to the present, I am only pointing out to you these things with reference to the past. You have drawn our attention to a number of affidavits. I find in the record before the Commission that nearly all of these affidavits have been literally and expressly summarized by counsel on behalf of the Corps of Political Leaders. The Prosecution has stated its position.

DR. SERVATIUS: Yes, Mr. President, it is a brief compilation. It was submitted at the beginning. Perhaps I can briefly make statements as to the last few affidavits so I can turn over to the collective affidavits.

THE PRESIDENT: I hope you will be very very short, then, and confine yourself only to those affidavits which have not

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been summarized before the Commission.

DR. SERVATIUS: Then I should like to refer to Affidavit Number 47 and Affidavit Number 48. Both of them deal with the Communal policy. This is an office of but little significance. I should like to refer to the contents only. Then there is the affidavit of a Gau Economical Advisor. During his two years of activity, he had but once to speak to the Gauleiter.

Of particular significance is perhaps Affidavit Number 50 which the Plenipotentiary for official delegates opposes. We see in the actual racial policy we have known it during this proceeding, he had nothing whatever to do. Then follows the Affidavit of Gauamtsleiter who points out the separation of the various officers and the segregation. The last is an affidavit by a Gauamtsleiter for the care of war victims. He points out the various officers connected with this work. In this way, Your Lordship, I have come to the end of my dealing with the separate and single affidavits, however, I should like to submit a few more affidavits.

I am turning now to the collective affidavits beginning with 53. Before I turn to these I should like to submit 4 single affidavits first. The reason for submitting them now is that they were mentioned rather late by the Prosecution. The first one is an affidavit by Gauleiter Hoffmann. It deals with the Euthanasia treatment. He gives his opinion. This is affidavit Number 65. I should like to submit this affidavit.

THE PRESIDENT: Is this an affidavit which has not been submitted to the Commission?

DR. SERVATIUS: It was not submitted to the Commission for at that time the Commission had concluded its hearings already.

THE PRESIDENT: You cannot put in any new affidavits. The Tribunal so rules.

DR. SERVATIUS: Mr. President, they were not dealt with in the Commission and in no way have they been a topic of the

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proceedings, but because of their being submitted by the Prosecution recently, I must have the opportunity of dealing with them. New documents were submitted. I have had the permission to deal with them and I ask the permission to have these documents admitted for that purpose.

THE PRESIDENT: I suppose that is right if they are dealing with new documents.

DR. SERVATIUS: Yes.

THE PRESIDENT: There are only 4 affidavits. Is that it?

DR. SERVATIUS: Yes, only four.

The next affidavit is EC 385 which was a telegram of Ambassador Abetz dealing with the Jews in France. He explains this incident. He defines his attitude. I should like to submit this affidavit.

The next affidavit, Number 67, deals with the document which has been submitted and marked USSR 143 in dealing with the Styrian Heimatbund (Home League) and affirms that this was not a part of a party organization.

The last affidavit deals with Document EC 68. It deals with the confidential letter of the Baden Landesbauernschaft and with matters which are well-known to the High Tribunal such as the treatment of the Polish workers.

I am turning, now, to the collective affidavits which are 38,000 in number. I gave a much greater number. I believe I was a victim of the picture that I supposedly presented and the report which was presented by Colonel Neave in which he says that there are 50,000 affidavits. Out of 38,000 affidavits certain extracts were dealt with such as the Church question, and the Jewish question. These experts compiled these statements, and sumarized them.

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THE PRESIDENT: Oh yes, now you are dealing with number 53.

DR. SERVATIUS: Yes.

THE PRESIDENT: Well now, on page 3777 of the transcript before the Commissioner that affidavit is fully set out, I mean to say it is fully summarized.

DR. SERVATIUS: Mr. President, I just want to give an explanation so that a picture can be gathered as to how these summaries were arrived at. However, if the Tribunal does not consider it necessary for me to go into that explanation --

THE PRESIDENT: Well, Dr. Servatius, we have got an enormous number of documents in this case and surely to have the same thing done twice over at this stage is unnecessary.

Have you got page 3777 before you?

DR. SERVATIUS: No, I have not.

THE PRESIDENT: As I understand it 53 is a collective summary and report on the affidavits which follow, is that not so?

DR. SERVATIUS: Yes.

THE PRESIDENT: Well then, in this transcript of the evidence before the Commission it says that the result consists of the group report by Karl Hoderich and of the following individual declarations, Jewish persecutions -- that is 54; treatment of foreign civilian labor and prisoners of war -- 55; disassembling of trade unions -- 56; concentration camps by Richard Mueller -- 57; operational staff Rosenberg by Richard Mueller -- 58 and so on right down the list.

DR. SERVATIUS: Yes. Then that has been read. However, I did not receive this report. If it is contained therein then, of course, I do not need to submit it now.

THE PRESIDENT: It is already set down in the transcript.

DR. SERVATIUS: At that time the matter was discussed that certain of these main affidavits would be translated and should be submitted and that was the thing I wanted to do now and I also wanted to cite the contents of the various affidavits as they concern themselves with the various points. The first affidavit, 53, only states how the entire thing was done. Then the

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second one deals with the Jewish question, that is affidavit 54.

THE PRESIDENT: What I am pointing out to you that what you are saying identically is set down in this transcript. What is the point of repeating it for another transcript?

DR. SERVATIUS: Mr. President, I do not know this report and what it covers.

THE PRESIDENT: Well, it sets out the contents of 53, 54, 55, 56 and there is Mueller 57.

DR. SERVATIUS: Mr. President, is it possible that I receive a copy of this report and in case I find it necessary to make remarks that I be permitted to do so?

THE PRESIDENT: I am told you have got the German of this. It is the transcript of what happened before the Commissioner and your representative, Dr. Link, is the man who was doing it. It is on page 3777.

DR. SERVATIUS: Mr. President, I just missed this because of the quantity of material. Therefore, I should like to refer to it without dealing with the affidavits one by one.

As far as the church question is concerned I should like to refer to one point. There are two theologians who very extensively and comprehensively deal with this matter and this seems to be of great significance to me.

Mr. President, I have concluded my submission of documents.

With reference to the statements of the last session concerning the members who participated, I had a statistical report set up yesterday. Perhaps I may submit this for the aid of the Tribunal rather than as a piece of evidence instead of the statistical party book which is in the library of the Prosecution so that one can figure out just what is to fall under the Indictment. I should like to submit this as an aid to the Tribunal rather than as a piece of evidence, if I may. It is in the German language.

THE PRESIDENT: Have the Prosecution any objection to the submission of this document?

SIR DAVID MAXWELL FYFE: My Lord, of course we have no idea what is in the document at the moment. But, My Lord, I think we shall make no objection to it.

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THE PRESIDENT: Perhaps you can look at it and we will have it handed to us later.

SIR DAVID MAXWELL FYFE: My Lord, if I understood Dr. Servatius correctly it is on the numbers of those who are to be included on the organizations. Colonel Griffith Jones has prepared an exact statement of those whom the Prosecution think are to be included and their numbers, which he proposed to give to the Tribunal at the close of Dr. Servatius' speech which may remove some of the difficulties which Dr. Servatius has in mind. But My Lord, I make no objection to the document going in to assist the Tribunal.

THE PRESIDENT: Very well.

DR. SERVATIUS: Mr. President, I did not quite follow as to when I was to receive these figures, after my final submission or before then. Of course, I think it would be important if I could know that in advance.

THE PRESIDENT: I think you will receive the document to which Sir David Maxwell Fyfe was referring to before you make your final submission because after you have dealt with your documents the other representatives of the organizations will have to deal with their documents and their affidavits. We will have it during that time.

DR. SERVATIUS: May I submit this statistical report?

THE PRESIDENT: Yes.

DR. SERVATIUS: Then I should like to conclude my statement herewith, Mr. President.

THE PRESIDENT: Now which of the organizations shall we take next. I beg your pardon. Yes?

LT. COLONEL GRIFFITH JONES: I do not know whether it would be convenient for the Tribunal if I submitted some particulars of the figures which we were discussing the other day.

THE PRESIDENT: Could you not put in and hand to Dr. Servatius this statistical summary and then deal with the rest of the matter in argument? I understood from Sir David that you have a statistical document showing the number of political leaders whom the Prosecution contend are involved.

Well, Dr. Servatius wants to see that and, therefore, if you will give

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him that, that will be all that is necessary, will it not?

LT. COLONEL GRIFFITH JONES: My Lord, yes, except simply to explain what the document is, which will take two minutes. I think it will be of assistance to the Tribunal.

THE PRESIDENT: If it will only take two minutes.

LT. COLONEL GRIFFITH JONES: They are figures taken from the organization book. On page one the Tribunal will see the total numbers set out of all the political leaders whom the Prosecution are including in the organizations; the Hoheitstraeger, the staff of the Reichsleiter, the staff of the Gauleiter, the staff of the Kreisleiter. For the information of the Tribunal I have also included the staff of the Ortsgruppenleiter of 340,000. That total is 940,000. You deduct again the Ortsgruppen staff which I excluded and you get your figure of 600,000.

My Lord, in the subsequent pages particulars will be found of the officeholders on the Reichsleiter, Gauleiter and Kreisleiter staffs. The Reichsleiter, I think, speaks for itself. The Tribunal perhaps will look at Appendix "C". There it will be seen that the offices on the Gauleiter staff are set out.

My Lord, those are all taken from the organization book and I would only say that those show the maximum establishment of the Gau and Kreis staffs and they were not by any means always up to strength so that the figures, the total figure 600,000 is to be the maximum that is possible.

THE PRESIDENT: Now we will deal with the Gestapo.

DR. MERKEL (Counsel for the Gestapo): Mr. President, first of all I should like to have permission to discuss my document book. I have already introduced the various documents with the exception of Gestapo Exhibit Number 31, which I should like to submit at this point.

Gestapo Exhibits one and two deal with the concept and the aims of the political police in general. I should like to ask the Tribunal to take judicial notice of both these documents and I should like to ask the same with reference to Gestapo Exhibit 3 and 8. They contain the basic laws and directives dealing with the set-up, the development and the aims behind the Gestapo and first of all dealing with Prussia and finally for the entire Reich area.

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Gestapo exhibit number 9 is a copy in extract of the German police official law dealing with the 24th of June, 1937. I shall read Paragraph 1 from it. This is found on Page 28 of the document book.

"This law pertains to the executive officials of the Security Police and the Cri inal Investigation Police of the Reich and the communities, the Military Police, and the Secret State Police, as well as for other police executive agents of the Security Police (police executive agents)."

From this, we can see that the Polizeivollzugsbeamten executive officials had a special position in that they alone were subordinate to the police law, not the other branches, such as, for instance, administrative.

Now, Gestapo Exhibit No. 10 contains the temporary executive decree of this law which we have just mentioned. It delineates the concept of the executive police officials. I quote from Part 1, concerning Paragraph 1 of the law; and this may be found on Page 33 of the document book: "Police executive officials are with the Reich Criminal Investigation Police, the Secret State Police, and also with other branches of the Security Police : Criminal Assistants (Kriminalassistenten), Criminal Senior Assistants (Kriminaloberassistenten), Criminal Secretaries, (Kriminalsekretaere), Criminal District Secretaries (Kriminalbezirkssekretaere), Criminal Inspectors (Kriminalinspektoren), Criminal Commissars (Kriminalkommissare), Cri inal Counsels (Kriminalraete), Cri inal Directors (Kriminaldirektoren), Councillors of the Government and Cri inal Police (Regierungs und Kriminalraete), Senior Councillors of the Government and Cri inal Police (Oberregierungs und Kriminalraete), Directors of Government Criminal Police Departments (Regierungs und Kriminaldirektoren) and Directors of the Reich Criminal Police (Reichskriminaldirektoren)."

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Because of the law of the 19th of March, 1937, the officials of the Gestapo became direct Reich Officials. I quote from Gestapo Exhibit No. 11, Page 36 of the document book.

"Article 1. The following are to become direct officials of the Reich: Officials of the Security Police (Gestapo and Criminal Police), but not police officials serving in the State Police Administrations for the Criminal Police."

Dealing with the document, Gestapo Exhibit 12, I should like to have the High Tribunal take official notice of it. It is a copy of the law of the 17th of June, 1936, dealing with the appointment of a chief of the German police in the Reich Ministry of the Interior; and I should like to have the High Tribunal take official notice of Gestapo Exhibit No. 13, which concerns itself with the use of inspectors in the Security Police.

Gestapo Exhibit No. 14 was submitted as USA Exhibit 266 and has been submitted as such already, and it is proved that it was prohibited to the Party to be active in the Gestapo. I should like to quote from Figure 1, second paragraph, which is at Page 42 of the first document book.

"I forbid all offices of the Party, its organizations and affiliated associations to undertake investigayions and interrogations in matters which are the business of the Gestapo. All occurrences of a political-police character are to be brought immediately to the knowledge of the competent offices of the Gestapo, as before, without prejudice to their being further reported along Party channels."

From Page 2 of the same document Page 43 of my document book, I should like to quote a third paragraph. "I particularly emphasize that all cases of treasonable activity against state or realm coming to the knowledge of the Party are to be reported to the Gestapo without delay. It is in no way a task of the Party to

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make investigations or inquiries of any kind in these matters on its own initiative."

THE PRESIDENT : From which page was it that you were reading then?

DR. MERKEL : Page 43, Mr. President, Page 43 of the German document book.

THE PRESIDENT : May I have the heading?

DR. MERKEL : Yes, the heading is "Reporting of Treasonable Activities to the Gestapo", and from that I read the third paragraph, starting with the words : "I particularly emphasize that ..."

THE PRESIDENT : Yes, I see.

DR. MERKEL : That the taking over of political offices by officials of the Gestapo was not welcomed by the Gestapo may be seen from Page 3 of this document, which is Page 44 of the document book, the last paragraph : "Since it", that is, the Secret State Police, "is still in the process of organization and the available officials and employees are very much in demand, they are only to take over positions in the Party to the extent that this is compatible with their official duties in the Gestapo.

From Gestapo Exhibit No. 15, which is an excerpt from the Reich administrative law of 1935, I should like to say that the Gestapo could receive complaints. This is the first paragraph, Page 46 of the document book; "Since the Law on the Secret State Police (Geheime Staatspolizei) of the 30th of November, 1933, became effective, orders of the Office of the Secret State Police (Geheimes Staatspolizeiamt) can no longer be contested according to the provisions of the Law on the Administration of Police. The only remedy against them is a complaint to the superior authority.

Further, I should like to quote for the legal status of the Gestapo and of the Office of the Gestapo page 3 of this same

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document, which is Page 48 of the document book. I shall quote paragraph 2, "In accordance with all this the legal status of the Office of the Secret State Police since the Law of the 30th of November 1933, became effective is the following : The office is part of a special authoritative organization, the "Secret State Police" which forms an independent branch of the Administration of the Prussion State. It hasm like the Secret State Police as a whole, a special field of duties : the management of affairs of the political police."

Of Gestapo Numbers 16 and 17 I should like to have the High Tribunal take official notice. They deal with the introduction of the laws establishing the Gestapo in non-German areas. Gestapo Exhibit No. 19 deals with the border police as a part of the Gestapo and is the copy of a circular of the Reich and Prussion Ministry of the Interior of the 8th of May, 1937. I shall quote from No. III. This is Page 53 of the document book. "The execution of the police tasks at the frontier is entrusted to the Border Police Branches (Border Police Commissioners' office and Border Police Posts)." I shall omit the next sentence. "The Border Police Commissioners' Offices (including the Border Police Posts established by them) are, as before the Border Service Stations in Prussia and Baden , offices for Foreign Service of the State Police Branches competent for their district."

Gestapo Exhibit No. 19 is a copy of a circular given out by the Chief of the SIPO and Department III of the 30th of June, 1944, in which thenunification of the military and political police defense machine is set up. I shall quote from this text, just quote the first three paragraphs, at Page 56 of the document book. I quote :

"The results of the transfer of the special department III. Economy existing within the former branches to the agencies of

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document, which is Page 48 of the document book. I shall quote paragraph 2, "In accordance with all this the legal status of the Office of the Secret State Police since the Law of the 30th of November 1933, became effective is the following : The office is part of a special authoritative organization, the "Secret State Police" which forms an independent branch of the Administration of the Prussion State. It hasm like the Secret State Police as a whole, a special field of duties : the management of affairs of the political police."

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the State Police, is the union of the counter-espionage protection entrusted to the army, and the political police in industry and economy.

"The responsibility for the defense of the armaments industry as well as of all other war and vital plants from espionage is henceforth the responsibility of the chief of the Security Police and of the Security Service and his subordinate offices of the Secret State Police.

"The carrying out of counter-espionage departments in plants are now exclusively the task of the Secret State Police, according to the instructions given by the Reich Security Office.

Dealing with other Gestapo Exhibit No. 20, I ask the High Tribunal to take official notice. It is a directive given out by Himmler on the 25th of November 1938, dealing with the creation of a central office for preliminary registration for police purposes. Through the setting up of this office, it was possible to detail members for service in this branch, even against their will.

Concerning Gestapo Exhibit No. 21, I should like to have hte High Tribunal take official notice of that document as well. It deals with qualification tests for applicants for service in the Security Police; and the same applies to Gestapo Exhibit No. 22, which is a directive of the 14th of December 1936. It says that candidates for Criminal Commissioners will have to meet the same tests or have the same qualifications as candidates for the regular criminal Police.

Then, concerning Gestapo Exhibit No. 23, I should like to have the High Tribunal take official notice of that document, which is a decree of the 2nd of June, 1937, whuch says that police and gendarmerie officials details for service were detailed

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for service in that they did not come to the Gestapo voluntarily.

THE PRESIDENT : What you are doing now isn't assisting the Tribunal in the very least. Would it not be better to submit all these documents, that is to say, to put them in, and ask us to take judicial notice of them, which we shall do, because they are decrees, and then to refer to any particular paragraphs in them when you come to make your argument? I say that because this is meaningless to us to read excerpts; and it is confusing to read a number of them without making any submissions at all about them. When you come to make your argument, you can draw our attention to any particular passage you want in order to explain the arguments, but this is not doing you any good at all.

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DR. MERKEL: Yes, Mr. President, I have made provisions for that in my final summation. However, in my final summation I am trying to be as brief as possible, and I only refer to these documents, on the assumption that I might read them now in the submission of documents. However, if the High Tribunal wish to take judicial notice of these documents, then of course I shall be satisfied.

THE PRESIDENT: It is more informative to our minds than to have it separated between the reading of the documents now and your final argument. If we have to listen to the same sort of thing from all other organizations, why it is beyond human ability to carry all these things in our minds.

Dr. Merkel, if there are any special passages in these decrees or documents which you wish to draw our attention to now, in order that we may read them carefully before you make your speech, well and good; but it is no good going through one after the other like this without making any comment at all. Do you follow what I mean?

DR. MERKEL: Yes, Mr. President, I quite understand. For that reason I only read you a few brief sentences from the very, very important ones, and I ask that the High Tribunal take judicial notice of the rest.

THE PRESIDENT: I don't know what you call a very few brief ones, but we have had about fifteen or twenty already. That doesn't seem to me to be very few.

DR. MERKEL: Of course, Mr. President, we must take into consideration that we have only three hours at our disposal for the final summation. For that reason it seems suitable to me, first of all, to submit my documentary evidence in such a way so that the documents can be submitted to the High Tribunal. Then, in the final summation, I would refer to it in a summary way. Since this documentary material must be submitted to the High Tribunal in some way or other, at some time or other, we considered it more suitable to separate the two, to submit the documentary material now, shortly, and then, in our final summary,

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to deal with an evaluation of these pieces of evidence which had been submitted briefly.

Apart from that, I have almost concluded my submission of those documents. In the second volume of my document book there are but a few documents from which I wish to quote a few brief passages..

THE PRESIDENT: Go on, then.

DR. MERKEL: Gestapo Exhibit number 32, the first one in my document book number 2, shows that the combatting of partisan bands was not the concern of the Party or of Himmler, but rather of the Army itself; and I should like to refer to an affidavit in this case deposed by a certain Rode, which has already been submitted as USA document 562.

Gestapo Exhibit No. 33 shows that the orders regarding the execution of Russian prisoners of war in the concentration camps came from the inspector of the concentration camp and not from Amt IV, or Office IV, of the RSHA..

Exhibits 34, 35 and 36 deal with the concept and the execution of protective custody, and I ask that the High Tribunal take judicial notice of them, as well as No. 37.

I now turn to Gestapo Exhibit No. 38, which is a copy of a letter of the Inspector of the Concentration Camps of the 15th of October, 1936. I quote from figure number 2, at page 101 of my document book:

"Besides the Chief of the German Police, the following are authorized to enter concentration camps:

"a. The Chiefs of the three SS Main Headquarters.

"b. The administrative Chief of the SS.

"c. The chief of RFSS Personnel.

"d. The SS Gruppenfuehrers."

I should like to quote figure 4:

"All other SS members, official commissioners and civilians, desiring to enter premises in which prisoners are lodged or engaged in work, for the purpose of visiting, require my express

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written authorization."

Gestapo Exhibit No. 39 deals with the same topic.

I should like to submit Gestapo Exhibits numbers 40, 41, 42, 43, 44 and 45, as proof of the fact that concentration camps were not under the Gestapo, but rather the Reich Administrative Office.

Along the same lines may be found Exhibits numbers 46 and 47. Number 46 is a questionnaire addressed to August Eigruber of the 27th of March 1946; and number 47 is a questionnaire addressed to Friedrich Karl von Eberstein, dated the 26th of March, 1946. Both have already been submitted by the defense counsel for the defendant Kaltenbrunner.

Numbers 48 through 52 deal with the recruitment of foreign workers for the Reich area, and there is proof that this was the sole responsibility of the General Plenipotentiary for Labor.

The setting up of work educational camps may be seen from Exhibits 54 to 57.

The seizing and securing of cultural articles in the East are matters contained in 58 and 59.

Gestapo Exhibit No. 60 is the well-known decree about increased or intensified interrogations.

Number 61 is a copy, in excerpt form, of a letter of Heydrich to Goering of the 11th of November, 1938, and it shows that the Gestapo took steps against the excesses of the night of the 9th to the 10th of November, 1938.

Gestapo Exhibit number 62 is a copy, in excerpt form, of testimony given by Dr. Mildner of the 22nd of June, 1945. It refers to the deportation of the Jews, and the subordination of the concentration camps under the SS Administrative and Economic Main Office.

Mr. President, this will conclude my documentary evidence.

As far as the affidavits are concerned, I should like to submit, first of all, the German copies of the transcript taken

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before the Commission, which I did not have up until now. I should like to submit them to the Tribunal. They are copies of the transcript of the 9th, 19th and 27th of July, and the 3rd of August. They are contained, in summary form, in Gestapo Exhibits 1 through 91.

THE PRESIDENT: Dr. Merkel, it isn't necessary for you to submit copies of the transcript of the Commission's evidence; it comes to us directly from the Commission, so you need not trouble about that.

DR. MERKEL: Very well, Mr. President.

THE PRESIDENT: It is suggested to me that perhaps it would be better for you to offer it in evidence and give it a number in your list of numbers.

DR. MERKEL: Then I shall give the transcript of the 9th of July the number Gestapo Exhibit No. 63; the 19th of July shall be Exhibit No. 64; the 27th of July, 65; and the 3rd of August, Gestapo Exhibit No. 66.

I should like to suggest that the submission of these affidavits has been prepared in the following way so that time can be saved. Twenty-two out of the 91 have been translated.

I shall summarize the most important ones according to their subject matter, and I shall read from those affidavits which have been translated some few brief passages which seem of especial importance to me. I would like to read those into the record.

So far as the rest of the affidavits are concerned, I should like to have the High Tribunal take judicial notice of them.

Besides these 91 individual affidavits, a collective affidavit is at hand composed of 1255 special, single affidavits. This summary is in line with the resolution of the Court of the 5th of July, 1946. It was made out by former members of the Gestapo who are now interned, and the authenticity of this summary was affirmed by me. I ask your permission to read this

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brief summary.

I turn to the first group, and I shall summarize affidavits numbers 1, 2, 3, 4, 9, 13, 71, and 90. They deal with the occupied countries.

Jewish questions were handled by a special commander under the leadership of Dannecker. From 1940 to 1942, they were carried out by the German military authorities, in agreement with the Ambassadors, and the German military commander decreed the rest.

The recruitment of French laborers for the Reich area was done by the Field Commanders. In May of 1942 the Secret Field Police were, perforce, taken into the SIPO. Police directives, up until April of 1942, lay in the hands of the French police and of the German military police units.

From Affidavit number 2, which has been translated, I ask permission to read the following. Page 1, paragraph 2:

"From October 1940 until October 1941, I was chief of the outside office of the Security Police and of the Security Service in Dijon, and from December 1943 up to the retreat from France I was Commander of the Security Police and of Security Service in Dijon.

"Composition of the Security Police Command Dijon:

"There were about ten Gestapo members; 13 criminal investigation, Kripo, members; and 69 men called up for emergency service (Notdienstverpflichtete).

"As can be seen from the list, of the 92 male members of my Command at the time, ten only belonged to the Gestapo. Hereby it must be taken into account that of these 10 Gestapo members, the larger part did not volunteer for the Gestapo but were transferred or ordered to it, or came to it for some other reason, without those concerned having been able to have any influence on the decision or to resist it."

I shall skip the next sentence.

"The Security Police Command Dijon must be regarded as an

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average command in France, for its strength as well as for its composition."

On page 3 of this affidavit, after the heading "Jewish Questions", I shall read a brief paragraph which follows. It reads:

"Recaptured prisoners of war were not even once brought to a concentration camp or shot by the Dijon office, but immediately turned over to the nearest competent army office."

THE PRESIDENT: Where are you reading now?

DR. MERKEL: Mr. President, this is taken from Affidavit No. 2, at page 3 of the German original, and it follows after the brief heading, "Jewish Question". It is the first paragraph on the page.

THE PRESIDENT: Yes.

DR. MERKEL: It begins with the words "Recaptured prisoners of war".

I shall skip the next four paragraphs and shall continue:

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"There were no special Security-Police or Security service (SD) prisons in the Dijon area. Besides, never were arrestees in any prisons executed by orders of the Security Police (Sipo) or Security Service (SD), to prevent their liberation by allied troops."

Dealing with affidavit Number 3. May I read the following? It is in the beginning of the second paragraph.

"In September 1941 I was transferred from the infantry to the GFP (Secret Field Police), and without my having anything to do with it, in June 1942 I was commanded to the office of the commander of the Sipo and the SD in Poitiers."

Next paragraph, "The Sipo command at Poitiers was composed of about 5 officials of the Stapo and about 5 officials of the Kripo; about 80 former members of the GFP, who, the same as I, were released jointly from the Wehrmacht and were engaged for war emergency service."

On page 2 of this affidavit, under the heading "Command Order", I should like to read the following.

"This order is known to me only in its basic idea through Wehrmacht reports, press, and so forth." I shall omit the next sentence. "This order was not carried out in the Poitier sphere. I an mention two examples:

"In June 1942 in a joint action of the Sipo and the Wehrmacht, a camp with 40 English parachute troops was raided whereby during the short fight only 3 Englishmen were killed, while those left were taken prisoner and given over to the Wehrmacht, although it was established that the group had carried out acts of sabotage on a railroad three kilometers from Poiters, and more than 200 kilometers behind the invasion line, and had provided French partisans with arms and had organized them."

And the next paragraph as well.

THE PRESIDENT: What does that mean, "200 kilometers behind the invasion line" in reference to June, 1942?

DR. MERKEL: That is the town of Portiers which is about 200 kilometers behind the invasion line.

THE PRESIDENT: There was no invasion in 1942.

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DR. MERKEL: I beg your pardon. It is June 1944. That is a typographical error, your Lordship.

THE PRESIDENT: Go on.

DR. MERKEL: "Likewise, in March 1944, in the same territory, 5 American airmen who were not wearing civilian clothes and in company of 40 armed partisans, were taken prisoners and given over to the Luftwaffe."

The next point I should like to summarize. Those are affidavits numbered 5, 6, 7, 8, and 14. Mr. President, in this connection, I beg your pardon that the numbers are not in consecutive order, and this may be explained through the fact that these affidavits, as far as they came from camps, were received at various intervals. The affidavits deposed by the witnesses here in the local jail were received one at a time, therefore it is inevitable that these affidavits are not numbered consecutively. I should like to repeat the numbers: 5, 6, 7, 8, and 14. These affidavits prove that the Gestapo was not concerned with the excesses of the 9th and 10th of November, 1938, and that it was not only not participating, but took steps against it. In numerous cases, it undertook arrests of the members of the SA and the SD. The 20,000 Jews who were arrested were once more released after their immigration papers had been established.

The numbers 15 through 21; 21 through 34, 72, 73, 76, 84, and 85 comprise a group which deals with the following. The offices of the Security Police and SD in occupied countries were not made up of voluntary members, administrative officials, or technical officials of the Gestapo. The Gestapo had nothing to do with the executive work, and in accordance with the strictest secrecy which was preserved, they could not know anything about detail and emergency workers and other employees cannot be accused and considered as co-perpetrators. New members were not brought in voluntarily, but rather, as a result of transfers and special detail.

Now, I shall read from affidavit number 15. I should like to read the following into the record. It is the second page, second paragraph.

"In May, 1919, I was assigned to the Political Police, newly established as Dept. VI with the Police Headquarters in Munich."

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THE PRESIDENT: Wait a minute. Are you reading affidavit number 15?

DR. MERKEL: 15, yes.

THE PRESIDENT: You say the second page, the second paragraph, and you begin something about 1919. I do not see that.

DR. MERKEL: No, Mr. President, it's the first page, second paragraph, right at the beginning of the affidavit.

THE PRESIDENT: On the first page, it begins on January 1913.

DR. MERKEL: "On 1 January 1913 I was employed as policeman in Munich". However, I omitted that, and the third sentence begins with, "In 1933, I, with almost all other members of this office, was transferred to the Bavarian Political Police which, with almost the same personnel setup, was again transferred to the Secret State Police in Munich. The entire personnel was screened politically by the SD whereby a large part of the civil servants and employees of the former political department of the Police Headquarters were judged negative."

Then I shall read from page 2 of the German text, under Arabic number 2.

"While I was in charge of the office during the time from 1933 to 1939 I always pointed out to the officials under me that it was forbidden to mistreat the prisoners. I did not hear of any of my officials laying violent hands upon a prisoner."

Of arabic figure 4 I shall read the next to the last sentence of the fir paragraph.

"I learned that persons frequently pretended to be Gestapo officials. These persons also committed criminal acts. Because of the increase of such incidents, Himmler issued a decree according to which all persons who impersonated an official of the Gestapo were to be put into a concentration camp."

Turning to affidavit number 16, I should like to read from page 1, the 4th paragraph. It can be found in the first three sentences.

"On the basis of my activity with the Secret State-Police Office in Berlin I can confirm that the Secret State Police Office was made up of almost exclusively the former officials of the old system."

THE PRESIDENT: You are reading 16 are you? Which page?

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DR. MERKEL: The paragraph from which I was reading is on page 1. The paragraph begins with the fact that "In the year 1935" and the 4th sentence, "On the basis of my activity. . ."

THE PRESIDENT: "Without being consulted I was in 1935 ordered and transferred. . ."

DR. MERKEL: Yes, yes, Mr. President, that's the paragraph. And a little bit farther down, the 4th sentence, "On the basis of my activity with the Secret State-Police Office in Berlin." Then I shall read the following paragraph.

"Just like the Secret State-Police Office in Berlin, so too did the large majority of the working-force of the State-Police offices throughout the Reich consist of old professional police officials who had been transferred from the old 1-A sections of the criminal police and from the remaining branches of the police to the State Police, or were ordered thereto, without their wishes being taken into consideration."

Then I skip a paragraph, "Transfers back were out of the question because an order existed which absolutely prohibited it. If, in spite of this requests were handed in for transfer back or transfer from the Gestapo to another branch of the police, such requests were usually answered with penal transfer. Such requests were not made because the Gestapo was considered a criminal organization, but mostly for purely personal reasons."

From the affidavit number 18 I should like to read the following: Page 3 of the German original, arabic number 1, under the heading "Officers."

"There were about 50-60 officers' positions in the whole Sipo".

Then, arabic figure 2, "Administrative Civil Servants."

"The administrative civil servants were engaged exclusively in office work of the entire police-administration. They were strictly separated ffom the executive officials by different regulations of their career, by different titles, and different duty passes. They especially had nothing to do with the executive work. A chance in their position and activity never took place."

Arabic 3, "Executive officials".

"They executed the real tasks of the Gestapo which were laid down by law.

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Thereby, it should be noted, however, that a number of these officials also were engaged in pure office work as is the case in every office."

Arabic 4, "Civilian employees".

"The civilian employees were mainly clerks and other office personnel and other personnel for subordinate work."

Arabic 5, "Emergency-Conscripts". Here I shall read only the end of this paragraph.

"But if an emergency conscript came to the Gestapo and not to any other governmental office or to another private enterprise, against that no right whatsoever to complain existed."

I shall omit two paragraphs and shall read the third one which follows:

"I would estimate that the Gestapo had about 10,000 emergency conscripts by the end of 1944."

Arabic 6, "Men Detailed from the Waffen SS".

"In order to guarantee the requirements of personnel for the Gestapo, members of the Waffen-SS who, due to wounds and other physical handicaps could not be utilized at the front any more, were detailed to the Gestapo in increasing numbers during the war."

THE PRESIDENT: I think we had better break off now.

(A short recess was taken.)

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From Affidavit Number 18, I should like to be permitted to read Article 7, to the members of the former Secret Field Police. "With the transfer of the tasks of the Secret Field Police to the Security Police, at first in the occupied territories in the West, the members of the Secret Field Police were also taken over into the SIPO respectively -- the Gestapo were taken over. T transfer was done by order, so that none of the transferred men could have do anything against it." And then the final papers of that -- altogether approximately 5,500 men were taken over. And again to the first sentence of the following paragraph: "Particular importance was attached to secrecy in t case of the Gestapo." I skip the following sentence, and I call attention in particular to the Fuehrer order from January, 1940, which was extended immedi ly by the Reichsfuehrer SS to include the security police. "Secrecy was pronounced as the supreme duty of all members of the security police, and thereby of the Gestapo. These security regulations were announced in certain periods to all members of the individual offices, and the announcement taken down by protocol. In that connection, it was pointed out time and again that any offences against the security regulations would beseverely dealt with, and, in certain cases, even be punishable by death."

From Affidavit No. 20, I beg to be allowed to read as follows: On page one, second paragraph: "The members of the administration service for the lower, middle and higher service were taken, by orders of the Gestapo and from 1937 by the Security Police Main Office, from the officials of all authorities, ,ainly, however, from the police administration and were transferred to the Security Police or to the Gestapo".

From No. 30, I shall read the following: First from the one under the heading "Construction and composition of the Gestapo in Bielefeld.". "When the Gestapo was founded, in 1934, about eight criminal investigation officials and two police administration officials of the criminal investigatio police of other cities were transferred to the Bielefeld Gestapo. The transfer was made without previous consent of the concerned officials."

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Then I am going to read from Page 3 of the same affidavit, and I beg to be allowed to quote one example of the construction of a fairly high Gestapo department.

"Construction and composition of the Gestopo in Bruenn. In the spring of 1944, the personnel of the Gestapo direction in Bruenn comprised about 800 persons, distributed about as follows: Police administration officials, about 35; executive officials, criminal investigation officers, about 280; drivers, employees, about 110; frontier police officials, about 65; criminal investigation employees, interpreters, about 90; prison supervision personnel, about 80; female office personnel, about 90; other auxiliaries, about 50."

And then the second paragraph from there: "When the Gestapo direction in Bruenn was created, about 400 officials were transferred from offices in the Reich proper, without having been asked previously, to Bruennor the local offices depending from Bruenn. More than half of the auxiliary personnel was under emergency duty or duty obligation.

I shall then come to Affidavit No. 31, from which I shall read on Page 2, at the beginning. "At the end of 1944 the Gestapo consisted of approximately the following: Administrative officers, 3,000; executary officers; 15,500; employees and workmen, among them, 9,000 called up for emergency service, 13,500. Grand total, 32,000. These members of the Gestapo may be considered to be the prmanent ones insofar as they made up the normal staff. In addition to these persons, there were the following groups: Detached from the Waffen-SS, 3,500; taken over from the Secret Field Police, 5,500; taken over from themilitary defense and the OKW, 5,000; personnel of the former military-letter-censorship, 7,500; members of the customs-frontier guard, 45,000."

Then I come to affidavit 34, where I shall read from the first page. The heading is "Professional career", and I shall read the last quotation.

"1 April 1933, transfer, that is, ordered to jointhe Secret State Police Department of Berlin. I received at that time a letter reading as follows:

'By virtue of the authority vested in me by the Reich Minister of the Interior, you are hereby transferred as of --- to the Secret Police Office.'

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"I had no say in the matter of this transfer. The attempt of my superior in the Police Presidency to save me from this transfer, failed."

I now beg to be permitted to speak about the relationship of the frontier police to the statepolice, and I come to Affidavit No. 22, from whi I beg to be allowed to read the following: This is page 2 of the German original.

"The members of the frontier police were taken over from the Bavarian frontier police, which existed already before 1933, into the frontier police of the Gestapo. Later on, after the annexation of Austria, the Austrian frontier police were added, as well. The incorporation of the frontier police officials was not voluntary, neither in Bavaria nor in Austria. On the contrary, the officials were transferred as a group to the Gestapo when unification was being brought about in the Reich and after the annexation of Austria."

I skip the following sentence.

"The officials could not object against their transfer to the Gestapo on grounds of the instructions concerning the right of officials. They had to obey to this transfer."

Then I come to the second paragraph from there.

"The tasks of the frontier police were strictly laid down by law. The tasks were mainly supervision of passanger-traffic across the frontier, the execution of police instructions with regard to passports, supervision of goods traffic in connection with the custom authorities. Political tasks, like those of the Gestapo in a stricter sense, were not the business of the frontier police."

I skip the next sentence and go on to quote:

"I know from my own experience that the tasks of the frontier police and also its activity did not change after 1933."

Then I shall read thelast paragraph:

"I must still draw attention to the fact that the same tasks as those of the frontier police were executed at many small frontier passages by members of the Reich finance administration, customs administration. In this the customs officials were bound by exactly the same instructions as

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members of the frontier police."

Numbers 23, 24, 35 and 29 deal with the question of secrecy. No department within the state police knew anything about orders issued by some other department. Even private conversation was forbidden. Considering the strictest secrecy orders, even very few persons of the RSHA who were immediately concerned with certain matters knew of individual measures which were introduced.

From No.35 I read the following; and this is on page 8 of the original the second paragraph:

"Most important of all for factual discussions were accordingly the personal conferences between Office chief and Group chief or their deputies on one hand, and, as until now, Office chief and his department heads on the other."

Then I come to the beginning of the following paragraph:

"The same must have been applied to the reports concerning mass shootings in the East, as quoted by the Prosecution. It is not known in every case which officials may have had any knowledge of such reports besides the RFSS, CDS, and some individual Chiefs of Offices. If this could perhaps have been the case for the immediately competent Group chief and department heads, it certainly is not a fact that, as asserted by the prosecution, the bulk of the officials of Office IV, or, even more, of the Reich Main Security Office or of the Offices throughout the Reich have had any knowledge."

From affidavit number 39 I beg to be permitted to read the following from Page 3 of the original:

"Upon my assuming office in the RSHA in August 1941, Mueller declared to me that in his sphere of activity he placed great value upon the observing of stipulations for secrecy and that he would proceed without pity with the sharpest measures against infringement."

And then the last sentence of the same paragraph:---

THE PRESIDENT: We have heard about this secrecy over and over again, not only in your affidavits, but throughout the trial. Surely it isn't necessary to read theparagraphs of these affidavits about secrecy.

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We quite understand that everybody alleges that.

DR. MERKEL: Very well. Then Gestapo No. 25 contains news with reference to the USA Document No. 219, the transfer of 35 Lithuanians willing to work into armament firms attached to concentration camps.

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The affidavit originates from a sub-department chief of the Gestapo and I shall quote from the third paragraph, third sentence: "In another case, the order by the chief of the Security Police and the SD of 17 December 1942, according to which at least 35,000 persons capable of working were to be transported to concentration camps to work in the armament plants there, was not carried out by many Gestapo offices. These persons were to be recruited from the prisoners of the labor training camps of the Stapo offices. This was incompatible with the customs followed until then and was interpreted as arbitrary measures by many office chiefs known to me. At conferences in the RSHA, I learnt that the office was unable to fulfil the request of the Reichsfuehrer SS to provide prisoners, because the Stapo leaders did not provide prisoners from their labor training camps but hid behind pretexts."

The composition, the summary of affidavit No. 36 states that in the spri of 1944, the bulk of the members of the department of intelligence in the OKW had been forcibly transferred by the Gestapo.

Affidavit No. 40 states that the order for the evacuation of Jews from Hessen in 1942, had come directly from the Chief of the Security Police and not from Department IV of the RSHA. As reasons for the evacuation of labor service, he was quoted.

Numbers 42, and to some extent 91, deal with the decree that the crucifixes should be removed from schools. I shall read the second sentence on the first page: "Approximately in 1942, Gauleiter Wagner, in his capacity of the Bavarian Minister of Culture, ordered that the crucifixes were to be removed from all Bavarian schools."

I skip the following sentence. "It is carried out with the greatest difficulties on the part of the population so that service departments of the party who were dealing with the carrying out of that order were calling upon the district commander and the district police offices for assistance. Since the affair had a political character, the district officials approached the State police department in Nurnberg, with the request for advice or assistance. As an expert for church matters, I stated to the first district official approaching me that the Gestapo in Nurnberg would not help with this decree unless they were forced and that he would not receive any assistance from the

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State police for the carrying out of the order. Even in the case of further instructions to the political officials, the State police would not introduce any such police measures."

I shall skip the following sentence.

"I then reported the matter to the president of the police at once, who shared my point of view absolutely. In agreement with him, I then informed the remaining district officials concerned, by telephone, to the effect that they should act correspondingly."

The content of affidavit No. 43 said that upon objections being raised by the commander on the question of the Security Police, the intentions of the Landrat to the effect that the Protestant church there should be changed to a cinema, was stopped."

THE PRESIDENT: Dr. Merkel. You heard what I said to Dr. Servatius, did you not?

DR. MERKEL: Yes, Mr. President.

THE PRESIDENT: Isn't the state of affairs exactly the same in your case, that all these affidavits have been summarized in the transcript before the Commission, which we have got before us in writing and therefore what you are doing is simply cumulative?

DR. MERKEL: I had merely thought that in order to support these summaries in the record, short extracts from the affidavits --

THE PRESIDENT: It is no use telling me what you merely thought. You heard what I said to Dr. Servatius, that the Tribunal did not want to hear the same thing over again which was done in the transcript before the Commissioners. It was all gone into perfectly clear with Dr. Servatius and it was explained to him, in your hearing, that we cannot carry all these things in our minds and that it is useless to go over them twice unless there is some matter of very great importance which you want to draw our attention to before you make your final speech; and I said that before and I don't want to have to say it again.

DR. MERKEL: In this case, if I may, I shall refer to the summaries in the protocols taken before the Commission, with reference to the following numbers up to 91 and then I hope to be allowed to assume that the Tribunal will

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take cognizance of the contents of these summaries and I therefore shall merely have to refer to summaries of affidavits if the Tribunal wishes me to do so. I can read the summary contained in that affidavit; as far as I know, that has not been translated.

We are concerned here with pages of a summary of 1,276 individual affidavits which do not appear on the protocol before the Commission.

THE PRESIDENT: Yes, go on.

DR. MERKEL: Regarding the question of membership being enforced, 566 affidavits are available which state that when the Secret State Police was created, the requirements for personnel in their majority were met from the old political police. Regarding coercion being applied for membership of compulsory-serving men, there are 427 statements and affidavits which deal with the same subject.

785 affidavits state that they had no knowledge of the crimes of which the Gestapo is being accused.

Regarding the difference from the point of view of organization between the Gestapo and the Reich and the Security in Occupied Territories, statements are contained in 39 affidavits.

195 affidavits state that the writers had no knowledge of inhuman treatment in the atrocities committed in concentration camps and a few officials who had visited the concentration camps could not notice any irregularities there; released detainees did not speak about concentration camps in a different manner.

133 affidavits state that no participation or supervision of the excesses of the 9th of November, had taken place.

67 affidavits state that the looting of private and state property was forbidden members of the Gestapo.

135 affidavits state that a large number of the members in the affidavits knew nothing about the existence of the Einsatz Groups or of atrocities supposedly committed by them.

218 affidavits state that the decree "Kugel" (Bullet) was unknown to the majority of the State Police officials and that recaptured prisoners of war were surrendered to the Armed Forces departments.

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168 affidavits state that the crews of aircraft who descended by parachute had been returned to the Air Force by the Gestapo and 23 affida vits mention that the decree of protective custody was a matter for the RSHA.

181 affidavits speak of punishment of members of the Gestapo through SS and Police Court perpetrations during and off duty.

With that, Mr. President, I have come to the end of my submission of evidence by means of documents.

LT. COMMANDER HARRIS: May it please the Tribunal, I have just two short comments to make concerning documents which were presented here as to which I think he wasin error and I respectfully request the Tribunal to turn to his Gestapo Exhibit No. 33.

THE PRESIDENT: Yes.

LT. COMMANDER HARRIS: Dr. Merkel has cited this document as evidence that the executions in concentration camps were ordered by the WVHA but I would respectfully invite the attention of the Tribunal to the sentence in the center on the first page and I quote: "For this measure, permission of the Chief of the Security Police must be obtained."

THE PRESIDENT: Regarding the sentence, Commander Harris, the Tribunal thinks that this is a matter which can be dealt with in argument and not at this stage.

LT. COMMANDER HARRIS: Very well.

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THE PRESIDENT: Now, the Tribunal will hear the case of the S.D. Is counsel for the S.D. not present ?

DR. STAHMER: The defendant counsel is being fetched and he will be here in a minute.

THE PRESIDENT: Marshal , have you made any effort to get--to obtain the presence of this counsel ? Have you communicated with him ?

THE MARSHAL: We got in touch with his office, and we are looking for the defense counsel right now.

THE PRESIDENT: The Tribunal will adjourn now until tomorrow morning at ten o'clock.